



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2012-0193]

RIN 1625-AA09

Drawbridge Operation Regulation; Atlantic Intracoastal Waterway (AIWW), at Wrightsville Beach, NC; Cape Fear and Northeast Cape Fear River, at Wilmington, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the operating schedule that governs three North Carolina Department of Transportation (NCDOT) bridges: The S.R. 74 Bridge, across the AIWW, mile 283.1 at Wrightsville Beach, NC; the Cape Fear Memorial Bridge across the Cape Fear River, mile 26.8; and the Isabel S. Holmes Bridge across the Northeast Cape Fear River, mile 1.0; both at Wilmington, NC. The proposed modification will alter the dates and times these bridges are allowed to remain in the closed position to accommodate the time and route change of the annual YMCA Tri Span 5K & 10K races.

DATES: Comments and related material must reach the Coast Guard on or before [Insert date 60 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2012-0193 using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC, 20590-0001.

(4) Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Lindsey Middleton, Fifth District Bridge Program, Coast Guard; telephone 757-398-6629, e-mail Lindsey.R.Middleton@uscg.mil. If you have

questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2012-0193), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (<http://www.regulations.gov>), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via <http://www.regulations.gov>, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you

include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rules" and insert "USCG-2012-0193" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG-2012-0193" and click "Search."

Click the "Open Docket Folder" in the "Actions" column.

You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under ADDRESSES. Please explain why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

B. Regulatory History and Information

The current operating schedule for the S.R. 74 Bridge at Wrightsville Beach, NC, the Cape Fear Memorial Bridge and the Isabel S. Holmes Bridge both at Wilmington, NC are located at 33 CFR 117.821(a)(4), 33 CFR 117.823, and 33 CFR 117.829 (a) respectively. All three operating regulations were last amended on May 27, 2011 regarding an unrelated issue. There have been no previous publications or other efforts to reach out to the public in the development of the proposed rule modifications because these races are annual races that mariners are familiar with and this proposed rule makes minor adjustments to the times the bridges will be unable to open.

C. Basis and Purpose

The YMCA Tri Span 5K and 10K races are annual events that are held in the Wrightsville Beach and Wilmington, NC areas. Recently, the Wilmington Family YMCA made a permanent change to both the time and route of the events. The races will continue to be held on the second Saturday of July of every year; however, the events will now begin and end an hour earlier (7 a.m. to 9 a.m.) and the race routes will now include the S.R. 74 Bridge. As a result, the Wilmington Family YMCA, on behalf of NCDOT, is requesting a change to the current operating regulations

for the S.R. 74 Bridge, the Cape Fear Memorial Bridge, and the Isabel S. Holmes Bridge. This proposal would allow the bridges to remain in the closed position from 7 a.m. to 9 a.m. on the second Saturday of July of every year.

The S.R. 74 Bridge is a double-leaf bascule drawbridge across AIWW, mile 283.1, at Wrightsville Beach, NC. It has a vertical clearance of 20 feet at mean high water in the closed position. The Cape Fear Memorial Bridge is a vertical-lift bridge across the Cape Fear River, mile 26.8, at Wilmington, NC. It has a vertical clearance of 65 feet at mean high water in the closed position. The Isabel S. Holmes Bridge is a double-leaf bascule drawbridge, at mile 1.0, at Wilmington, NC with a vertical clearance of 40 feet at mean high water in the closed position.

D. Discussion of Proposed Rule

The Coast Guard proposes to amend 33 CFR 117.821 (a) (4) for the S.R. 74 Bridge, mile 283.1 at Wrightsville Beach, NC to allow the bridge to remain in the closed position from 7 a.m. to 9 a.m. on the second Saturday of July of every year. The Coast Guard proposed to amend 33 CFR 117.823 and 33 CFR 117.829 (a) (4) for the Cape Fear Memorial Bridge and the Isabel S. Holmes Bridge, respectively, to allow the bridges to remain in the closed position from 7 a.m. to 9 a.m. on the second Saturday of

July of every year from the current closure times of 8 a.m. to 10 a.m. on the second Saturday of July of every year. The amendments to these operating regulations will allow the bridges to remain in the closed position for the racers of the annual YMCA Tri Span 5K & 10K races to safely cross the bridges. The Coast Guard will issue Local Notices to Mariners and Broadcast Notices to Mariners every year to remind mariners of the annual closures which will allow them to plan their scheduled transits accordingly.

There are no alternative routes available to vessels transiting these waterways. Vessels that can transit under the bridges without an opening may do so at any time. The bridges will be able to open for emergencies.

E. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 14 of these statutes or executive orders.

1. Regulatory Planning and Review

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential

costs and benefits under section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The proposed changes are expected to have minimal impacts on mariners due to the short duration that the moveable bridges will be maintained in the closed position. The races have been reserved in years past with little to no impact to marine traffic. It is also a necessary measure to facilitate public safety that allows for the orderly movement of participants before, during, and after the races.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels needing to transit any of the effected bridges from 7 a.m. to 9 a.m. on the second Saturday of July of every year.

This action will not have a significant economic impact on a substantial number of small entities because the rule adds minimal restrictions to the movement of navigation and mariners who plan their transits in accordance with the scheduled bridge closures can minimize delay. Vessels that can safely transit under the bridges may do so at any time.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above. The Coast Guard will not retaliate against small

entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

6. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure,

we do discuss the effects of this rule elsewhere in this preamble.

7. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

8. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

9. Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

10. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a

substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

11. Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

12. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

13. Environment

We have analyzed this rule under Department of

Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (32)(e), of the Instruction.

Under figure 2-1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. In § 117.821 revise paragraph (a) (4) to read as follows:

§ 117.821 Atlantic Intracoastal Waterway, Albermarle Sound to Sunset Beach

(a) * * *

(4) S.R. 74 Bridge, mile 283.1, at Wrightsville Beach, NC, between 7 a.m. and 7 p.m., the draw need only open on the hour; except that from 7 a.m. to 9 a.m. on the second Saturday of July of every year, from 7 a.m. to 11 a.m. on the third and fourth Saturday of September of every year, and from 7 a.m. to 10:30 a.m. on the last Saturday of October of every year or the first or second Saturday of November of every year, the draw need not open for vessels due to annual races.

* * * * *

3. Revise §117.823 to read as follows:

§ 117.823 Cape Fear River

The draw of the Cape Fear Memorial Bridge, mile 26.8, at Wilmington need not open for the passage of vessels from 7 a.m. to 9 a.m. on the second Saturday of July of every year, and from 7 a.m. to 11 a.m. on the first or second Sunday of November of every year to accommodate annual races.

4. In § 117.829 revise paragraph (a) (4) to read as follows:

§ 117.829 Northeast Cape Fear River

(a) * * *

(4) From 7 a.m. to 9 a.m. on the second Saturday of July of every year, from 12 p.m. to 11:59 p.m. on the last Saturday of October or the first or second Saturday of November of every year, and from 7 a.m. to 11 a.m. on the first or second Sunday of November of every year, the draw need not open for vessels to accommodate annual races.

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Dated: April 11, 2012

Lincoln D. Stroh
Captain, US Coast Guard
Acting Commander, Fifth Coast Guard District

[FR Doc. 2012-10415 Filed 04/30/2012 at 8:45 am;

Publication Date: 05/01/2012]